

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1082

Citations Affected: IC 35-48-1-9.3; IC 35-48-4.

Synopsis: Methamphetamine. Conference committee report for EHB 1082. Provides that a person may be charged with an offense under the controlled substances act for certain acts involving a controlled substance analog. Makes the possession of more than 10 grams of ephedrine, pseudoephedrine, or phenylpropanolamine a Class D felony, and provides sentence enhancements. Makes the possession of certain chemical reagents or precursors with the intent to manufacture methamphetamine a Class D felony and provides sentencing enhancements. Provides a defense to a charge of possession of a chemical reagent or precursor with intent to distribute for a physician, pharmacist, and certain other persons required to possess a reagent or precursor in the regular course of business, or for persons who possess certain precursors in a manner consistent with ordinary household usage. Prohibits the sale of chemical reagents or precursors to a methamphetamine or other controlled substance manufacturer. Requires a person convicted of certain methamphetamine offenses to provide restitution for the costs of environmental cleanup. Makes it a Class A misdemeanor for a person to take a person less than 18 years of age or an endangered adult into a place that is being used to unlawfully possess, manufacture, store, sell, or deliver drugs or controlled substances. **(This conference committee report does the following: Makes the possession of more than ten grams of ephedrine, pseudoephedrine, or phenylpropanolamine a Class D felony. Makes the possession of one or more chemical reagents or precursors with the intent to manufacture methamphetamine a Class D felony. Enhances the penalties for possessing chemical reagents or precursors near a school or park or while in possession of a firearm. Provides a defense for persons who possess more than ten grams of ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with ordinary household usage.)**

Effective: July 1, 2003.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1082 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 SECTION 1. IC 35-48-1-9.3 IS ADDED TO THE INDIANA CODE
- 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2003]: **Sec. 9.3. (a) "Controlled substance analog" means a**
- 4 **substance:**
- 5 **(1) the chemical structure of which is substantially similar to**
- 6 **that of a controlled substance included in schedule I or II and**
- 7 **that has; or**
- 8 **(2) that a person represents or intends to have;**
- 9 **a narcotic, stimulant, depressant, or hallucinogenic effect on the**
- 10 **central nervous system substantially similar to or greater than the**
- 11 **narcotic, stimulant, depressant, or hallucinogenic effect on the**
- 12 **central nervous system of a controlled substance included in**
- 13 **schedule I or II.**
- 14 **(b) The definition set forth in subsection (a) does not include:**
- 15 **(1) a controlled substance;**
- 16 **(2) a substance for which there is an approved new drug**
- 17 **application;**
- 18 **(3) a substance for which an exemption is in effect for**
- 19 **investigational use by a person under Section 505 of the federal**
- 20 **Food, Drug and Cosmetic Act (chapter 675, 52 Stat. 1052 (21**
- 21 **U.S.C. 355)), to the extent that conduct with respect to the**

1 substance is permitted under the exemption; or

2 (4) a substance to the extent not intended for human
3 consumption before an exemption takes effect regarding the
4 substance.

5 SECTION 2. IC 35-48-4-0.5 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2003]: **Sec. 0.5. For purposes of this chapter, a "controlled
8 substance analog" is considered to be a controlled substance in
9 schedule I if the analog is in whole or in part intended for human
10 consumption.**

11 SECTION 3. IC 35-48-4-4.6, AS AMENDED BY P.L.150-1999,
12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2003]: **Sec. 4.6. (a) A person who knowingly or intentionally:**

14 (1) manufactures;

15 (2) finances the manufacture of;

16 (3) advertises;

17 (4) distributes; or

18 (5) possesses with intent to manufacture, finance the manufacture
19 of, advertise, or distribute;

20 a substance described in section 4.5 of this chapter commits a Class C
21 felony.

22 (b) A person who knowingly or intentionally possesses a substance
23 described in section 4.5 of this chapter commits a Class C
24 misdemeanor. However, the offense is a Class A misdemeanor if the
25 person has a previous conviction under this section.

26 (c) In any prosecution brought under this section it is not a defense
27 that the person believed the substance actually was a controlled
28 substance.

29 (d) This section does not apply to the following:

30 (1) The manufacture, financing the manufacture of, processing,
31 packaging, distribution, or sale of noncontrolled substances to
32 licensed medical practitioners for use as placebos in professional
33 practice or research.

34 (2) Persons acting in the course and legitimate scope of their
35 employment as law enforcement officers.

36 (3) The retention of production samples of noncontrolled
37 substances produced before September 1, 1986, where such
38 samples are required by federal law.

39 (e) ~~In addition to any other penalty imposed for conviction of an
40 offense under this section, a court shall order restitution pursuant to
41 IC 35-50-5-3 to cover the costs of an environmental cleanup incurred
42 by a law enforcement agency or other person as a result of the offense.~~

43 (f) ~~The amount collected under subsection (e) shall be used to
44 reimburse the law enforcement agency that assumed the costs
45 associated with the environmental cleanup described in subsection (e).~~

46 SECTION 4. IC 35-48-4-13.3 IS ADDED TO THE INDIANA CODE
47 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
48 1, 2003]: **Sec. 13.3. A person who recklessly, knowingly, or
49 intentionally takes a person less than eighteen (18) years of age or
50 an endangered adult (as defined in IC 12-10-3-2) into a building,
51 structure, vehicle, or other place that is being used by any person**

to:

(1) unlawfully possess drugs or controlled substances; or

(2) unlawfully:

(A) manufacture;

(B) keep;

(C) offer for sale;

(D) sell;

(E) deliver; or

(F) finance the delivery of;

drugs or controlled substances;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

SECTION 5. IC 35-48-4-14.5, AS AMENDED BY P.L.17-2001, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14.5. (a) As used in this section, "chemical reagents or precursors" refers to one (1) or more of the following:

(1) Ephedrine.

(2) Pseudoephedrine.

(3) Phenylpropanolamine.

(4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).

(5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).

(6) Organic solvents.

(7) Hydrochloric acid.

(8) Lithium metal.

(9) Sodium metal.

(10) Ether.

(11) Sulfuric acid.

(12) Red phosphorous.

(13) Iodine.

(14) Sodium hydroxide (lye).

(15) Potassium dichromate.

(16) Sodium dichromate.

(17) Potassium permanganate.

(18) Chromium trioxide.

(b) A person who possesses more than ten (10) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding ten (10) grams commits a Class D felony. However, the offense is a Class C felony if the person possessed:

(1) a firearm while possessing more than ten (10) grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances exceeding ten (10) grams; or

(2) more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine, or phenylpropanolamine, or a

combination of any of these substances exceeding ten (10) grams in, on, or within one thousand (1,000) feet of:

- (A) school property;**
- (B) a public park;**
- (C) a family housing complex; or**
- (D) a youth program center.**

(c) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

- (1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or
- (2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:
 - (A) school property;
 - (B) a public park;
 - (C) a family housing complex; or
 - (D) a youth program center.

(d) Subsection (b) does not apply to a:

- (1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or**
- (2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:**
 - (A) the location in which the substance is stored;**
 - (B) the possession of the substance in a variety of:**
 - (i) strengths;**
 - (ii) brands; or**
 - (iii) types; or**
 - (C) the possession of the substance:**
 - (i) with different expiration dates; or**
 - (ii) in forms used for different purposes.**

(e) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture:

- (1) Methcathinone, a schedule I controlled substance under IC 35-48-2-4;
- (2) Methamphetamine, a schedule II controlled substance under IC 35-48-2-6;
- (3) Amphetamine, a schedule II controlled substance under IC 35-48-2-6; or
- (4) Phentermine, a schedule IV controlled substance under IC 35-48-2-10;

commits a Class D felony.

~~(d)~~ **(f)** An offense under subsection ~~(c)~~ **(e)** is a Class C felony if the person possessed:

(1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6; or

(2) two (2) or more chemical reagents or precursors with intent to manufacture methamphetamine, a schedule II controlled substance under IC 35-48-2-6 in, on, or within one thousand (1,000) feet of:

(A) school property;

(B) a public park;

(C) a family housing complex; or

(D) a youth program center.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture methamphetamine, methcathinone, amphetamine, or phentermine commits unlawful sale of a precursor, a Class D felony.

SECTION 6. IC 35-48-4-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 17. (a) In addition to any other penalty imposed for conviction of an offense under this chapter involving the manufacture or intent to manufacture methamphetamine, a court shall order restitution under IC 35-50-5-3 to cover the costs, if necessary, of an environmental cleanup incurred by a law enforcement agency or other person as a result of the offense.**

(b) The amount collected under subsection (a) shall be used to reimburse the law enforcement agency that assumed the costs associated with the environmental cleanup described in subsection (a).

SECTION 7. [EFFECTIVE JULY 1, 2003] **(a) IC 35-48-4-13.3, as added by this act, and IC 35-48-4-14.5, as amended by this act, apply only to acts committed after June 30, 2003.**

(b) IC 35-48-1-9.3 and IC 35-48-4-0.5, both as added by this act, apply only to a controlled substance offense under IC 35-48-4 that occurs after June 30, 2003.

(Reference is to EHB 1082 as reprinted April 10, 2003.)

Conference Committee Report
on
Engrossed House Bill 1082

Signed by:

Representative Weinzapfel
Chairperson

Senator Bray

Representative Foley

Senator Craycraft

House Conferees

Senate Conferees